

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**STACEY W. NIELSEN,**

**Defendant.**

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**CASE NO. 8:04CR151**

**MEMORANDUM AND ORDER**

This matter is before the Court for initial review of the Defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" ("§ 2255 motion") (Filing No. 47).

The Defendant was sentenced on October 14, 2004. Attached to the § 2255 motion is a letter to the Defendant from defense counsel stating that he neglected to file a notice of appeal as he had discussed with the Defendant.

In his § 2255 motion, the Defendant raises a claim of ineffective assistance of counsel based on counsel's apparent failure to file an appeal. Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of the defendant's § 2255 motion. Rule 4(b) states:

Initial consideration by judge. The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.

Having reviewed the record, I will order the United States to answer the Defendant's claim.

IT IS ORDERED:

1. The court completed its initial review of the Defendant's "Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (Filing No. 47);
2. That upon initial review, the court finds that summary dismissal of the defendant's § 2255 motion is not required;
3. That by July 8, 2005, the United States shall file an answer to the defendant's § 2255 motion, supported by a brief; and
4. That by August 8, 2005, the Defendant may file a reply brief.

DATED this 8<sup>th</sup> day of June, 2005.

BY THE COURT:

S/Laurie Smith Camp  
United States District Judge